

AMENDED IN ASSEMBLY AUGUST 29, 2012

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AMENDED IN SENATE MARCH 8, 2012

SENATE BILL

No. 965

Introduced by Senator Wright

(Coauthor: Senator Blakeslee)

(Principal coauthor: Assembly Member Alejo)

January 11, 2012

An act to amend Section 11125.7 of the Government Code and to amend Section 13228.14 of, to add ~~Sections~~ Section 13167.6 and 13169.5 to, and to add Chapter 4.1 (commencing with Section 13287) to Division 7 of, the Water Code, relating to ~~water~~ state and local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 965, as amended, Wright. ~~State Water Resources Control Board and California regional water quality control boards.~~ *State and local government.*

(1) Under existing law, the State Water Resources Control Board (state board) and the California regional water quality control boards (regional boards) implement the Federal Water Pollution Control Act and the Porter-Cologne Water Quality Control Act by prescribing waste discharge requirements for discharges to the waters of the state, as

specified. *Existing law authorizes the state board and the regional boards to hold hearings necessary for carrying out their duties, as specified.*

~~This bill would require the state board and each regional board to establish an environmental justice coordinator with prescribed duties.~~

~~(2) Existing law authorizes the state board and regional boards to hold hearings necessary for carrying out their duties, as specified.~~

~~This bill would also require the state board or a regional board, if the amount of time for each individual speaker to comment or testify at any hearing of the state board or regional board is limited as specified, to provide at least twice the allotted time to a member of the public who utilizes a translator, with a prescribed exception.~~

~~(3) Existing~~

Existing law, the Administrative Procedure Act, establishes the conduct of administrative adjudicative proceedings, which are defined as evidentiary hearings for determination of facts pursuant to which a state agency formulates and issues a decision. Existing law defines a decision as an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person. While an adjudication is pending, the act prohibits, as an ex parte communication, any communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer, as defined, from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication. The act provides that if the above prohibition is violated, the presiding officer shall promptly disclose the content of the communication on record and give all parties an opportunity to address the communication, as specified. The act also provides that a violation of that prohibition may be grounds for disqualification of the officer who engaged in the ex parte communication.

This bill would provide that the ex parte communications provisions of the Administrative Procedure Act do not apply to specified proceedings of the state board or a regional board. The bill would define an ex parte communication for these purposes as an oral or written communication with one or more board members regarding those specified state board or regional board proceedings. This bill would specify the instances in which an ex parte communication involving those specified proceedings is permissible.

The bill would authorize a board to prohibit ex parte communications for a period beginning not more than 14 days before the day of a board meeting at which the decision in the proceeding is scheduled for board action.

The bill would require all ex parte communications to be reported, as specified, by the interested person, regardless of whether the communication was initiated by the interested person.

The bill would authorize the state board or a regional board, in the event that an interested person fails to provide any required notice in the manner required by the bill, to use the remedies available under the administrative adjudication provisions of the Administrative Procedure Act.

(2) Existing law, the Bagley-Keene Open Meeting Act, generally requires that all meetings of a state body be open and public. The act requires that notice of public meetings and those held in closed session of a state body be given to any person who requests that notice in writing and that the agenda for those meetings be made available upon request without delay.

This bill would require the state board or a regional board to make each meeting agenda notice that the state board or a regional board provides available in both English and Spanish and would permit the state board or a regional board to make the agenda notice available in any other language.

Under existing law, the act requires that the agenda for meetings provide an opportunity for members of the public to directly address the body on any item of interest to the public that is within the subject matter jurisdiction of the body. The act permits the adoption of reasonable regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

This bill would require a state body subject to the act that limits time for public testimony to provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the body, with a specified exception.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 11125.7 of the Government Code is*
2 *amended to read:*

3 11125.7. (a) Except as otherwise provided in this section, the
4 state body shall provide an opportunity for members of the public
5 to directly address the state body on each agenda item before or
6 during the state body's discussion or consideration of the item.
7 This section is not applicable if the agenda item has already been
8 considered by a committee composed exclusively of members of
9 the state body at a public meeting where interested members of
10 the public were afforded the opportunity to address the committee
11 on the item, before or during the committee's consideration of the
12 item, unless the item has been substantially changed since the
13 committee heard the item, as determined by the state body. Every
14 notice for a special meeting at which action is proposed to be taken
15 on an item shall provide an opportunity for members of the public
16 to directly address the state body concerning that item prior to
17 action on the item. In addition, the notice requirement of Section
18 11125 shall not preclude the acceptance of testimony at meetings,
19 other than emergency meetings, from members of the public if no
20 action is taken by the state body at the same meeting on matters
21 brought before the body by members of the public.

22 (b) The state body may adopt reasonable regulations to ensure
23 that the intent of subdivision (a) is carried out, including, but not
24 limited to, regulations limiting the total amount of time allocated
25 for public comment on particular issues and for each individual
26 speaker.

27 (c) (1) *Notwithstanding subdivision (b), when a state body limits*
28 *time for public comment the state body shall provide at least twice*
29 *the allotted time to a member of the public who utilizes a translator*
30 *to ensure that non-English speakers receive the same opportunity*
31 *to directly address the state body.*

32 (2) *Paragraph (1) shall not apply if the state body utilizes*
33 *simultaneous translation equipment in a manner that allows the*
34 *state body to hear the translated public testimony simultaneously.*

35 ~~(e)~~

36 (d) The state body shall not prohibit public criticism of the
37 policies, programs, or services of the state body, or of the acts or
38 omissions of the state body. Nothing in this subdivision shall confer

1 any privilege or protection for expression beyond that otherwise
2 provided by law.

3 ~~(d)~~

4 (e) This section is not applicable to closed sessions held pursuant
5 to Section 11126.

6 ~~(e)~~

7 (f) This section is not applicable to decisions regarding
8 proceedings held pursuant to Chapter 5 (commencing with Section
9 11500), relating to administrative adjudication, or to the conduct
10 of those proceedings.

11 ~~(f)~~

12 (g) This section is not applicable to hearings conducted by the
13 California Victim Compensation and Government Claims Board
14 pursuant to Sections 13963 and 13963.1.

15 ~~(g)~~

16 (h) This section is not applicable to agenda items that involve
17 decisions of the Public Utilities Commission regarding adjudicatory
18 hearings held pursuant to Chapter 9 (commencing with Section
19 1701) of Part 1 of Division 1 of the Public Utilities Code. For all
20 other agenda items, the commission shall provide members of the
21 public, other than those who have already participated in the
22 proceedings underlying the agenda item, an opportunity to directly
23 address the commission before or during the commission's
24 consideration of the item.

25 ~~SECTION 1.~~

26 *SEC. 2.* Section 13167.6 is added to the Water Code, to read:

27 13167.6. ~~(a) At any hearing of the state board, if the state board~~
28 ~~limits the amount of time for each individual speaker to comment~~
29 ~~or testify pursuant to Section 11125.7 or 54954.3 of the~~
30 ~~Government Code, the state board shall provide at least twice the~~
31 ~~allotted time to a member of the public who utilizes a translator,~~
32 ~~in order to ensure that non-English speakers receive the same~~
33 ~~opportunity to directly address the state board.~~

34 ~~(b)~~

35 ~~Subdivision (a) shall not apply if the state board utilizes~~
36 ~~simultaneous translation equipment in a manner that allows the~~
37 ~~state body to hear the translated public testimony simultaneously.~~

38 *For each meeting agenda notice that the state board provides*
39 *pursuant to subdivision (b) of Section 11125 of the Government*
40 *Code, the state board shall make the agenda notice available in*

1 *both English and Spanish and may make the agenda notice*
2 *available in any other language.*

3 ~~SEC. 2. Section 13169.5 is added to the Water Code, to read:~~

4 ~~13169.5. The state board and each regional board shall establish~~
5 ~~an environmental justice coordinator duties tasks include, but are~~
6 ~~not limited to, all of the following:~~

7 ~~(a) Conducting research on best practices for developing and~~
8 ~~implementing the state board's environmental justice program.~~

9 ~~(b) Conducting training and developing informational material~~
10 ~~on environmental justice for all appointees, management, and staff~~
11 ~~of the state board or regional board.~~

12 ~~(c) Reviewing and incorporating into the environmental justice~~
13 ~~program relevant legislation.~~

14 ~~(d) Providing assistance and guidance on environmental justice~~
15 ~~events and activities to the executive director relative to the~~
16 ~~California Environmental Protection Agency's Environmental~~
17 ~~Justice Advisory Committee.~~

18 ~~(e) Incorporating the state board's bilingual program to ensure~~
19 ~~full participation by all Californians.~~

20 SEC. 3. Section 13228.14 of the Water Code is amended to
21 read:

22 13228.14. (a) Any hearing or investigation by a regional board
23 relating to investigating the quality of waters of the state,
24 prescribing waste discharge requirements, issuing cease and desist
25 orders, requiring the cleanup or abatement of waste, or imposing
26 administrative civil liabilities or penalties may be conducted by a
27 panel of three or more members of the regional board, but any
28 final action in the matter shall be taken by the regional board. Due
29 notice of any hearing shall be given to all affected persons. After
30 a hearing, the panel shall report its proposed decision and order to
31 the regional board and shall supply a copy to all parties who
32 appeared at the hearing and requested a copy.

33 (b) No party who appears before the panel is precluded from
34 appearing before the regional board at any subsequent hearing
35 relating to the matter. Members of the panel are not disqualified
36 from sitting as members of the regional board in deciding the
37 matter.

38 (c) The regional board, after making an independent review of
39 the record and taking additional evidence as may be necessary,

1 may adopt, with or without revision, or reject, the proposed
2 decision and order of the panel.

3 ~~(d) (1) At any hearing of a regional board, if the regional board~~
4 ~~limits the amount of time for each individual speaker to comment~~
5 ~~or testify pursuant to Section 11125.7 or 54954.3 of the~~
6 ~~Government Code, the regional board shall provide at least twice~~
7 ~~the allotted time to a member of the public who utilizes a translator,~~
8 ~~in order to ensure that non-English speakers receive the same~~
9 ~~opportunity to directly address the state board.~~

10 ~~(2) Paragraph (1) shall not apply if a regional board utilizes~~
11 ~~simultaneous translation equipment in a manner that allows the~~
12 ~~regional body to hear the translated public testimony~~
13 ~~simultaneously.~~

14 *(d) For each meeting agenda notice that a regional board*
15 *provides pursuant to subdivision (b) of Section 11125 of the*
16 *Government Code, a regional board shall make the agenda notice*
17 *available in both English and Spanish and may make the agenda*
18 *notice available in any other language.*

19 SEC. 4. Chapter 4.1 (commencing with Section 13287) is added
20 to Division 7 of the Water Code, to read:

21
22 CHAPTER 4.1. EX PARTE COMMUNICATIONS
23

24 13287. (a) For the purposes of this section:

25 (1) "Board" means the state board or a regional board.

26 (2) "Ex parte communication" means an oral or written
27 communication with one or more board members concerning
28 matters, other than a matter of procedure or practice that is not in
29 controversy, under the jurisdiction of a board, regarding a pending
30 action of the board that satisfies both of the following:

31 (A) The action does not identify specific persons as dischargers,
32 but instead allows persons to enroll or file an authorization to
33 discharge under the action.

34 (B) The action is for adoption, modification, or rescission of
35 one or more of the following:

36 (i) Waste discharge requirements pursuant to Section 13263 or
37 13377.

38 (ii) Conditions of water quality certification pursuant to Section
39 13160.

1 (iii) Conditional waiver of waste discharge requirements
2 pursuant to Section 13269.

3 (3) “Interested person” means any of the following:

4 (A) Any person who will be required to enroll or file
5 authorization to discharge pursuant to the action at issue before
6 the board or that person’s agents or employees, including persons
7 receiving consideration to represent that person.

8 (B) Any person with a financial interest, as described in Article
9 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
10 Government Code, in a matter at issue before a board, or that
11 person’s agents or employees, including persons receiving
12 consideration to represent that person.

13 (C) A representative acting on behalf of any formally organized
14 civic, environmental, neighborhood, business, labor, trade, or
15 similar association who intends to influence the decision of a board
16 member on a matter before the board.

17 (b) Notwithstanding Section 11425.10 of the Government Code,
18 the ex parte communications provisions of the Administrative
19 Procedure Act (Article 7 (commencing with Section 11430.10) of
20 Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government
21 Code) do not apply to a board action identified in paragraph (2)
22 of subdivision (a). This section only applies to those actions.

23 (c) For the purposes of this section, and except as limited by
24 subdivision (d), ex parte communications regarding a board action
25 identified in paragraph (2) of subdivision (a) may be permitted as
26 follows:

27 (1) All ex parte communications shall be reported by the
28 interested person, regardless of whether the communication was
29 initiated by the interested person.

30 (2) A notice of ex parte communication shall be filed with the
31 board within seven working days of the communication. The notice
32 may address multiple ex parte communications in the same
33 proceeding, provided that notice of each communication identified
34 therein is timely. The notice shall include all of the following
35 information:

36 (A) The date, time, and location of the communication, and
37 whether it was oral or written, or both.

38 (B) The identities of each board member involved, the person
39 initiating the communication, and any persons present during the
40 communication.

1 (C) A description of the interested person's communication and
2 the content of this communication. A copy of any written,
3 audiovisual, or other material used for or during the communication
4 shall be attached to this description.

5 (3) Board staff shall promptly post any notices provided pursuant
6 to paragraph (2) on the board's Internet Web site and distribute
7 the notice on any available electronic distribution list concerning
8 the action.

9 (d) A board may prohibit ex parte communications for a period
10 beginning not more than 14 days before the day of a board meeting
11 at which the decision in the proceeding is scheduled for board
12 action. If a board continues the decision, it may permit ex parte
13 communications during the interval between the originally
14 scheduled date and the date that the decision is calendared for final
15 decision, and may prohibit ex parte communications for 14 days
16 before the day of the board meeting to which the decision is
17 continued.

18 (e) If an interested person fails to provide any required notice
19 in the manner required by this section, the board may use any of
20 the remedies available pursuant to the administrative adjudication
21 provisions of the Administrative Procedure Act (Chapter 4.5
22 (commencing with Section 11400) of Part 1 of Division 3 of Title
23 2 of the Government Code), including the issuance of an
24 enforcement order, or sanctions pursuant to Article 12
25 (commencing with Section 11455.10) of Chapter 4 of Part 1 of
26 Division 3 of Title 2 of the Government Code.